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Letter dated 5 September 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 June 2003 (S/2003/623).

The Counter-Terrorism Committee has received the attached third report from the Republic of Kazakhstan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 4 September 2003 from the Permanent Representative of Kazakhstan to the United Nations addressed to the Chairman of the Committee

I have the honour to forward to you the third report of the Republic of Kazakhstan on the implementation of Security Council resolution 1373 (2001) concerning counter-terrorism (see enclosure).

(*Signed*) Yerzhan Kh. **Kazykhanov**

Enclosure

[Original: Russian]

Supplementary report pursuant to Security Council resolution 1373 (2001)

1. Implementation measures

1.3 In relation to subparagraph 1 (a) of the resolution, the supplementary report refers to draft legislation on measures to combat money-laundering in the Republic of Kazakhstan, which is pending approval by the National Bank. The CTC would appreciate receiving an outline of that draft legislation and a progress report of its enactment.

There is no legally binding obligation to report suspicious transactions at present. Nevertheless, the draft legislation on mandatory monitoring of individual financial transactions (heretofore referred to as the draft) elaborated by the Financial Police Agency stipulates such an obligation.

Thus, in accordance with article 4 of the draft, transactions of money or other assets are subject to mandatory checks if they correspond to the kinds of operations provided for under paragraph 2 of that article and if the sum involved equals or exceeds:

- Two thousand times the minimum indicators for individuals;
- Five thousand times the minimum indicators for corporations.

Transactions conducted by State bodies are not subject to mandatory monitoring.

The transactions involving money or other assets that are subject to monitoring include the purchase or sale of foreign currency; the purchase of securities; receipt of money by check made out to cash; exchange of banknotes of one denomination into banknotes of another denomination; withdrawal of money from or deposit of money into a bank account either once or several times in the course of a banking day; transfer of money from or to offshore zones; receipt by individuals or corporations of insurance payments, life insurance premiums or other forms of accrued insurance benefits; transfer of money abroad into an anonymous account; receipt of money from abroad out of an anonymous account; opening of a deposit account for a third person; sale or purchase of real estate or other assets subject to mandatory State registration; payment of awards for lotteries, totes and electronic games; operations conducted by organizations offering goods or services for sums that equal or exceed the sum referred to in paragraph 1 of this article: and operations referred to in article 6, paragraph 2 of the draft legislation.

Article 10 of the draft will determine liability for violations by organizations conducting transactions involving money or other assets and operating under licence, which may entail the possible revocation of the licence pursuant to the legislation of Kazakhstan.

Individuals or corporations found in violation of the present Act shall bear legal responsibility in accordance with the legislation of Kazakhstan.

The size of the sums involved in the transactions shall determine whether they are considered to be suspicious.

In accordance with the draft legislation on suspicious financial transactions, financial entities shall submit information to the relevant competent organ. These include banks; organizations that conduct various kinds of banking operations; exchanges; insurance and reinsurance companies; actuaries; insurance brokers; leasing companies; telecommunications service providers; pension funds; securities traders; notaries; pawnshops; accounting firms and auditors; government bodies and organizations responsible for real estate registration or transactions involving other assets subject to government registration; casinos and other gambling enterprises with slot machines and roulette tables, and other organizations and venues based on betting; founders and organizers of lotteries, totes and electronic games; entities providing goods and services in exchange for cash amounting to or exceeding the sum established in paragraph 1 of article 4 of the present Act.

Furthermore, reports of suspicious financial transactions by financial entities will be sent to the competent organ as determined by the President of the Republic of Kazakhstan. The way in which the competent organ is established, abolished and reorganized as well as its structure and size of personnel shall be determined in accordance with the law.

1.4 The supplementary report states (page 4) that "each second-tier bank independently defines the indicators for suspicious transactions" and that "questions concerning the identification by second-tier banks of suspicious transactions and dubious operations" are covered by the draft legislation on measures to combat money-laundering. For effective suppression of the financing of terrorism there must be an obligation on all financial institutions, and on all others involved in financial transactions, to report all suspicious transactions, as contemplated by article 18 of the Convention for the Suppression of the Financing of Terrorism. In this connection, the CTC would be grateful for further information, as follows:

- **What constitutes a "second-tier bank" in Kazakhstan?**
- **Is the report of suspicious transactions a legal obligation?**
- **Does the obligation extend only to suspected money-laundering activities or also to transactions involving funds of legitimate origin suspected of being related to financing of terrorism?**
- **What are the penalties for non-compliance with requirements to report suspicious financial transactions?**
- **What are the criteria by which transactions are characterized as suspicious?**
- **Is any requirement to report suspicious financial transactions imposed on financial institutions and intermediaries other than banks (for example, real estate agents and lawyers and accountants when engaged in financial transactions)?**
- **To which authority in the Government of Kazakhstan is the report of suspicious transactions addressed?**

In accordance with article 3 of Act No. 2444 of 31 August 1995 on banks and banking activities in the Republic of Kazakhstan, all banks are considered second tier except the National Bank (the Central Bank and the leading bank of the banking system) and the Development Bank of Kazakhstan, which has enjoyed special legal status under a legislative act of Kazakhstan.

At present, financial institutions are not obligated to report suspicious transactions. Nevertheless, Kazakhstan is drafting legislation to prevent money-laundering. In particular, it has drafted an act to counter illegal revenues obtained through money-laundering, which has provisions that will require financial institutions to report all suspicious transactions to the competent bodies.

The draft act provides for reporting transactions that are suspected of being linked to money-laundering. Furthermore, Kazakhstan is working to implement the Security Council resolution on the financing of terrorism, in particular by identifying bank clients engaged in terrorist activities, and taking into account that money-laundering and the financing of terrorism are interconnected.

Under the act, institutions shall bear administrative liability for failure to report suspicious transactions.

It is proposed that among the activities that fall within the category of being suspicious are transactions that are by nature unusual, do not have a clear economic motive, are highly risky, or are conducted with countries that do not comply with the recommendations of the Financial Action Task Force (FATF).

This draft act will designate a group of officials responsible for reporting any suspicious transactions to the competent organs. The group will be made up of bankers, Justice officials of Kazakhstan involved in the registration of assets, auditors and notaries.

The Criminal Code of Kazakhstan does not provide for criminal liability for the wilful provision or collection of funds by its citizens or in its territory for the purpose of using such funds, or with the suspicion that they may be used, to commit terrorist acts.

Under article 233 of the Criminal Code, terrorism involves acts that threaten the lives of people (even if it is one person), cause significant property damage or have other harmful effects on society.

Article 223 of the Criminal Code contains an amendment that provides legal incentives for persons to actively repudiate their association with terrorism. Thus, anyone involved in the preparation of a terrorist act shall be exonerated if he gives State organs timely warning, or uses other means, to prevent the terrorist act, and if he has not committed any other crime.

In accordance with article 51 of the Act on banks and banking activities, money and other assets of corporations and individuals held in banks may be frozen only by order of organs sanctioned by the public prosecutor to conduct inquests, investigations and enforcement proceedings as well as through court rulings, sentences and findings. In such cases, the sum of money frozen shall not exceed the amount claimed and the amount of the State duty and the expenses connected with the execution of the court's decisions, findings and rulings.

All banking transactions through corporate accounts (with the exception of correspondent accounts) may be suspended, in accordance with the legislative acts of Kazakhstan, by a signed order of the head of the tax and/or customs services and certified with the tax and/or customs seal sanctioned by the public prosecutor, and penalties may be imposed only in accordance with the legislative acts of Kazakhstan.

Money and other assets of corporations and individuals in banks, except accrued benefits from pension funds, may be confiscated only in accordance with a court ruling that has entered into force.

1.5 The supplementary report states that:

- **"second-tier banks are required to adopt internal bank documents governing questions relating to the bank's work with clients and partner banks" but the Act on banks and banking activities in the Republic of Kazakhstan does not provide any procedure for imposing penalties on second-tier banks for failure to adopt such documents (page 3);**
- **"it is thus practically impossible to open bank accounts anonymously in second-tier banks", but there is no provision for fines in the case of refusal (page 4).**

The CTC would appreciate receiving further information from Kazakhstan on legislation that is in place, or proposed, to assure that the banks are in compliance with the measures to prevent and suppress the financing of terrorist acts adopted by the National Bank of the Republic of Kazakhstan and that refusal to comply is appropriately dealt with.

The National Bank has sent letters to all commercial banks recommending that they meet such requirements. Similar requirements will also be stipulated in the above-mentioned draft, whereupon provision will be made for administrative liability for banks' failure to meet those requirements.

1.7 The supplementary report (page 4) states that "concerning the efforts of the international community to stop abuse of informal banking networks, second-tier banks are formulating and adopting internal documents regulating the internal monitoring system, which will cover such questions". The CTC would be grateful for an account of the implementation in Kazakhstan of the action taken, or proposed, in relation to the regulation of alternative money transmission agencies, not only in relation to money-laundering but also in relation to other criminal activity, especially the financing of terrorism.

Money transfers are banking transactions and licensed by the National Bank. No individual or corporation has the right to make such transactions without the appropriate licence from the National Bank. All individuals and corporations engaged in such activities shall be subject to the above-mentioned draft and required to present information on suspicious transactions.

1.8 Effective implementation of subparagraph 1 (b) of the resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds

are actually used to carry out a terrorist offence (see art. 2, para. 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place; or**
- **The funds are of a legal origin.**

The current provisions in the law of Kazakhstan, especially article 20 of Act No. 416-1 of 13 July 1999 and article 162 of the Criminal Code, do not appear to meet the above-mentioned requirements adequately. The CTC would welcome particulars of legal provisions that are in place to meet those requirements or, in their absence, an indication of the action that Kazakhstan intends taking in that regard.

In accordance with article 20 of the Act of 13 July 1999 on measures to combat terrorism, a person who has taken part in the preparation of a terrorist act is exempt from criminal liability if he provides a timely warning to the authorities or by some other means enables the terrorist act to be prevented, provided that he has not committed other offences.

Pursuant to the Act of 17 February 2002 on amending and supplementing certain legislative acts of Kazakhstan on questions of counter-terrorism, supplementary provisions were added to the Criminal Code. By this means, new categories of offences were introduced and criminal liability established for advocacy of terrorism and public incitement to commit an act of terrorism (article 233-1), as well as the establishment or leadership of a terrorist group, and participation in its activities (article 233-2).

Article 162 of the Code defines a mercenary as a person who acts in order to obtain material compensation or other personal advantage, is not a national of a State participating in the armed conflict, is not a permanent resident in its territory, and has not been sent by another State to carry out official duties. Further, under article 233 of the Criminal Code, terrorism is defined as carrying out an explosion, fire or other acts that jeopardize human life, cause significant property damage or have other dangerous consequences for society, where those acts are committed to violate public security, cause panic or influence decision-making by government authorities of Kazakhstan, a foreign State or international organization, including the threat to commit such acts for those purposes. In this connection, the purposes constituting definitive grounds for the commission of such an offence are varied. Closest to terrorism in the corpus delicti is sabotage (article 171): committing an explosion, fire or other act aimed at causing massive loss of life, injury to health, destruction of or harm to businesses, buildings, roads and communications or essential services, with the aim of undermining the security or defence capabilities of Kazakhstan, or, for the same purposes, mass poisoning or propagation of epidemics or episodic diseases. In addition, article 250 of the Criminal Code establishes criminal liability for smuggling items withdrawn from circulation, or items with restricted circulation (narcotic substances, weapons, military technology, explosive devices, ammunition, weapons of mass destruction, etc.).

1.9 Subparagraph 1 (c) of the resolution requires that States freeze without delay funds of persons who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. The supplementary report indicates that Kazakhstan has no legislation dealing with the requirement of the subparagraph and that "action to freeze specified accounts is contrary to the legislation in force". The Counter-Terrorism Committee would appreciate receiving information on how Kazakhstan proposes to meet that requirement.

In accordance with article 51 of the Act on banks and banking activities, money and assets of legal or physical entities held in a bank may be frozen only following orders by the organs of inquiry and preliminary investigation and orders by the executing organs, confirmed by a prosecutor, and following orders, decisions, judgements and rulings of the courts. Given the topicality of the issue terrorism and the danger posed to the public, revision of this article is now being considered, including the possibility of freezing assets located in accounts upon a bank's identification of an account which, pursuant to lists supplied by relevant international organizations, belongs to a person who is a terrorist (or to a terrorist organization).

1.10 The supplementary report states "in certain cases, circulation of weapons and military technology is licensed without special decisions by the Government of the Republic of Kazakhstan (conditions stipulated in resolution No. 1919)". Please outline these conditions.

Pursuant to paragraph 11 of the Instructions for conducting export controls in the Republic of Kazakhstan, approved under resolution No. 1919, in specific cases, goods subject to export control may be exported or imported without special decision by the Government of Kazakhstan. This applies to the export and import of:

(1) Special constituent parts for equipment and military technology to service industry and the repair of goods for military use by Kazakhstan firms on the basis of inter-factory cooperation with firms in other countries;

(2) Special constituent parts to service production of goods for military use for export to foreign countries under Kazakhstan licences;

(3) Spare parts, educational and training material relating to equipment and military technology previously supplied by foreign countries for technical maintenance and repair, including by using mass-produced constituent parts to replace parts no longer in production.

1.11 In relation to subparagraph 2 (e) of the resolution, the supplementary report states (page 10) that "under article 526, part 3, of the Code, foreign nationals in the territory of Kazakhstan may not be prosecuted for offences they committed before entering Kazakhstan". The Counter-Terrorism Committee would be grateful for an indication of how Kazakhstan meets the requirement of subparagraph 2 (e) of the resolution that provides that "any person who participates in the financing, planning, preparation or perpetration of terrorist acts or is supporting terrorist acts is brought to justice".

Article 526 of the Code of Criminal Procedure of the Republic of Kazakhstan regulates procedures governing the attendance and questioning of witnesses, victims, plaintiffs, civil defendants, their representatives and experts when they are nationals of a foreign State. Such activities in the context of legal proceedings are

carried out on a reciprocal basis or in accordance with an international agreement on the provision of legal assistance. In this connection, under article 526, paragraph 3, of the Code, only the above-mentioned persons enjoy immunity from criminal and administrative liability, arrest and punishment for acts committed before entering Kazakhstan.

Article 526, paragraph 3, of the Code of Criminal Procedure regulates the procedure for calling and questioning witnesses, victims, plaintiffs, civil defendants and their representatives when they are nationals of a foreign State, for the purposes of investigatory activities or court proceedings in the territory of Kazakhstan. For such purposes, the agreement of the above-mentioned category of persons to their being called and questioned is necessary before the investigatory activities or court proceedings may take place.

Accordingly, they may not be criminally or administratively prosecuted in the territory of Kazakhstan, or arrested or punished for acts committed outside Kazakhstan.

Such persons may also not be prosecuted, arrested or punished in connection with their testimonies as witnesses or their conclusions as experts in respect of a criminal matter under investigation in the territory of Kazakhstan.

This is one of the principles of international cooperation in the field of legal assistance in criminal matters.

Kazakhstan meets the requirement of subparagraph 2 (e) of the resolution in articles 7, 233 and 234 of the Criminal Code (relevant excerpts from the Code attached).

Article 7. Criminal law in respect of persons who have committed offences outside the Republic of Kazakhstan

4. Foreign nationals who have committed offences outside the Republic of Kazakhstan are subject to criminal liability under the Criminal Code in cases where the offence is aimed against the interests of Kazakhstan, or in cases provided for in international agreements concluded by Kazakhstan, providing that they have not been prosecuted in another State, and are standing trial in the territory of Kazakhstan.

Article 233. Terrorism

1. Causing an explosion or fire or other acts that jeopardize human life, resulting in significant property damage or have other dangerous consequences for society, where such acts are committed for the purposes of violating public security, causing panic or influencing decision-making by the government authorities of Kazakhstan, a foreign State or an international organization, including the threat to commit such acts for those purposes, are punishable by imprisonment for 4 to 10 years.

2. Those same acts, when committed:

(a) Repeatedly;

(b) With the use of firearms;

– are punishable by imprisonment for 7 to 12 years.

3. Acts provided for in paragraphs 1 and 2 of this article, if they:

(a) Are accompanied by the use of, or threat to use, weapons of mass destruction, radioactive materials, and the commission of, or threat to commit mass poisonings, spread epidemics or episodic diseases, or other acts capable of causing mass deaths;

(b) Have negligently caused a person's death or entailed other serious consequences;

– are punishable by imprisonment for 10 to 15 years.

4. An attempt on a person's life, committed for the purposes of violating public security, causing panic or influencing decision-making by the government authorities of Kazakhstan, a foreign State or an international organization, including an attempt on the life of a government or public official, committed for the same purposes, as well as for the purposes of bringing his government functions or other political activity to an end, or taking revenge for such activity, are punishable by imprisonment for 15 to 20 years, or capital punishment, or life imprisonment.

Note: A person who has participated in the preparation of an act of terrorism is exempt from criminal liability if he has provided a timely warning to the authorities or by some other means has enabled an act of terrorism to be prevented, provided that he has not committed other offences.

Article 233-1. Advocacy of terrorism or public incitement to commit an act of terrorism

1. Advocacy of terrorism or public incitement to commit an act of terrorism, as well as the dissemination of materials with such contents, is punishable by imprisonment for up to 5 years.

2. The same acts, committed by a person using his official status, by the head of a public association or through the mass media, is punishable by imprisonment for 3 to 8 years.

Article 233-2. Establishment or leadership of a terrorist group and participation in its activities

1. The establishment of a group for the purposes of committing offences for terrorist purposes (or by a terrorist group), as well as the leadership of such a group, is punishable by imprisonment for 8 to 15 years with or without confiscation of property.

2. Participation in the activities of a terrorist group or in acts of terrorism that may be committed by it is punishable by imprisonment for 6 to 12 years, with or without confiscation of property.

3. Acts referred to in paragraphs 1 and 2 of this article, carried out by a person using his official status or by the head of a public association, are punishable by imprisonment for 10 to 15 years, with or without confiscation of property.

Article 234. Hostage-taking

1. The taking or holding of hostages for the purposes of coercing a State, organization or citizen to commit, or to refrain from committing, an action, as a

condition for the release of the hostage is punishable by imprisonment for 3 to 8 years.

2. The same acts committed:

(a) By a group of people by prior agreement;

(b) Repeatedly;

(c) With the use of force, jeopardizing human life or health;

(d) With the use of weapons or objects that may be used as weapons;

(e) Against a person known to be a minor;

(f) Against a woman whom the guilty party knows to be pregnant;

(g) Against a person known to be in a helpless state;

(h) Against two or more persons;

(i) For mercenary motives or upon being hired;

– are punishable by imprisonment for 7 to 12 years.

3. The acts referred to in paragraphs 1 and 2 of this article, when committed by an organized group or if they have negligently caused loss of life or brought other serious consequences, are punishable by imprisonment for 10 to 15 years.

Note: A person shall be exempt from criminal liability if he has voluntarily, or at the request of the authorities, released a hostage and has not committed other offences.

1.12 If foreign nationals who have committed terrorist acts abroad and are found later in Kazakhstan cannot be prosecuted in Kazakhstan, is there any provision for their extradition to the State requesting their extradition? Please outline such provisions.

Persons who have committed offences abroad and are hiding from prosecution in the territory of Kazakhstan may be extradited at the request of another State.

In accordance with article 537 of the Code of Criminal Procedure, the grounds on which a person sentenced to imprisonment by a court in Kazakhstan may be extradited to serve his sentence in the State of which he is a national, including extradition of a national of Kazakhstan sentenced by a court in a foreign State to imprisonment, in order to serve his sentence in Kazakhstan, are laid down in an international agreement concluded by Kazakhstan with the relevant foreign State, or in a written agreement, on a reciprocal basis between the Public Prosecutor of the Republic of Kazakhstan and the competent authorities and officials of the foreign State.

In accordance with article 534 of the Code of Criminal Procedure, and upon receipt of the relevant official request from the competent institution of the foreign State, providing that there are legal grounds for extraditing the person, he may be detained, and suppressive measures adopted in the form of an arrest pending extradition.

At the request of a requesting State, the person may also be arrested before the request for extradition is received. Such request must include a reference to the

order for arrest or to a sentence that has acquired force of law, as well as an indication that an extradition order will also be submitted in due course.

The request for detention pending the extradition order may be sent by post, telegraph, telex or fax. After examining the materials submitted and after satisfying himself that there are sufficient grounds to suppose that the detainee is indeed the person referred to in the inquiry, the prosecutor submits an application for a detention pending extradition, the detainee being duly informed.

The prosecutor immediately transmits the information on any extradition detention he has ordered to the Public Prosecutor of the Republic of Kazakhstan or to the competent prosecutor, indicating the State of which the detained person is a national, as well as the name of the body initiating the investigation.

In accordance with article 8 of the Criminal Code, nationals of Kazakhstan who have committed an offence in the territory of another State are not subject to extradition to that State unless so established in international agreements. As yet, no such international agreements have been concluded.

Foreign nationals and stateless persons who have committed an offence outside Kazakhstan and are present in the territory of Kazakhstan may be extradited to a foreign State to stand trial or to serve a sentence in accordance with the relevant international agreement concluded by Kazakhstan.

To date, such international agreements have been concluded with seven States, namely China, the Democratic People's Republic of Korea, Mongolia, Lithuania, Turkey, Kyrgyzstan and Uzbekistan. A convention on legal assistance and legal relations in civil, family and criminal matters also exists in the framework of the Commonwealth of Independent States.

Article 8 of the Criminal Code of the Republic of Kazakhstan. Extradition of persons who have committed an offence

1. Kazakh nationals who have committed an offence in the territory of another State are not subject to extradition to that State unless so established in international agreements.

2. Foreign nationals and stateless persons who have committed an offence outside Kazakhstan and are present in the territory of Kazakhstan may be extradited to a foreign State to stand trial or to serve a sentence in accordance with the relevant international agreement concluded by Kazakhstan.

1.13 Subparagraph 2 (f) requires Member States to afford each other assistance in the matter of criminal investigations and judicial proceedings. The supplementary report states (page 10) that "legal relations with foreign States are based on the requirements of the Criminal Code[1] and on international treaties and agreements concluded by Kazakhstan with respect to legal

[1] *Translator's note*: In connection with paragraph 2 (f), the Russian version of the supplementary report (S/2002/1087) uses an acronym (УПК) referring to the *Code of Criminal Procedure*, while the English version refers to the *Criminal Code* (Russian acronym УК). The same divergence between the Russian and English is reproduced in the question from the Counter-Terrorism Committee here, hence the use of "Criminal Code" in the question and "Code of Criminal Procedure" in the answer.

assistance in criminal cases". Could Kazakhstan please indicate the relevant requirements of the Criminal Code on this matter?

Chapter 55 of the Code of Criminal Procedure stipulates that States must afford each other all-round assistance in criminal investigations and judicial proceedings:

Chapter 55. Basic provisions regarding the procedure for cooperation in criminal matters between organs conducting proceedings and competent institutions and officials of foreign States

Article 521. Court proceedings and other action taken in the course of providing legal assistance

1. In the course of providing legal assistance for investigative bodies and courts of foreign States with which Kazakhstan has concluded international agreements for legal assistance or with which reciprocity has been established, court proceedings may take place as provided for in this Code, and other action provided for in other laws of Kazakhstan and international agreements concluded by it may be taken.

2. Should the provisions of an international agreement which Kazakhstan has ratified conflict with those of this Code, the provisions of the international agreement shall prevail.

3. The institution receiving the application shall bear whatever expenditure involved in providing legal assistance is incurred within its own territory, unless otherwise provided in an international agreement to which Kazakhstan is a party.

Article 522. Authenticity of documents used in court proceedings

Documents prepared in the territory of the States referred to in article 521, paragraph 1, of this Code which comply with the legislation of those States and are stamped with an official seal shall be accepted unconditionally as documents usable in court proceedings unless otherwise provided in an international agreement to which Kazakhstan is a party.

Article 523. Procedure for legal assistance

1. Applications to conduct investigations shall be channelled through the Public Prosecutor of Kazakhstan (or his deputy, where appropriate), and applications for judicial proceedings shall be channelled through the Minister of Justice of Kazakhstan (or his deputy, where appropriate). Such applications may also be channelled through authorized officials, who may if necessary call upon the Ministry of Foreign Affairs of Kazakhstan to act as an intermediary.

2. An application shall be drawn up in the language of the foreign State to which it is directed, unless otherwise provided in an international agreement to which Kazakhstan is a party.

Courts, prosecutors, examining magistrates and investigators shall submit applications for legal assistance to conduct court proceedings or other action in the territory of another State in writing on the appropriate form, signed and stamped with the official seal of the body directing criminal proceedings.

Applications for legal assistance in the form of a reasoned request by a prosecutor or judge shall be sent to the Public Prosecutor, Minister of Justice or an authorized prosecutor, as appropriate.

The Public Prosecutor or Minister of Justice shall decide whether or not to send applications for legal assistance to the competent institution of another State.

The procedure for providing legal assistance in matters relating to extradition and criminal investigation is laid down in articles 527 and 529 of this Code.

Article 524. Content of applications for court proceedings

1. Applications to conduct investigations and judicial proceedings must be made in writing, signed by the official submitting the application and authenticated by the official stamp of the institution. The application should contain:

(1) The name of the body making the application;

(2) The name and address of the body to which the application is being sent;

(3) The name of the case and the nature of the application;

(4) Details of the individuals to whom the application relates (nationality, occupation, place of residence or temporary residence, and, for juridical persons, name and location);

(5) An explanation of circumstances which need to be clarified and a list of the documents and material and other evidence requested;

(6) Details of the factual circumstances and nature of the crime committed and, where necessary, an assessment of the damage caused by that crime;

(7) Other details needed for the application to be fulfilled.

2. The content of and requirements for applications for extradition and the launching of a criminal investigation are laid down in articles 529 and 530 of this Code.

Article 525. Procedure for fulfilling applications for court proceedings

1. Courts, prosecutors, examining magistrates and investigative bodies must fulfil applications for investigations or judicial proceedings appropriately submitted to them by institutions and officials of foreign States in accordance with the general rules of this Code.

2. In fulfilling such an application, a foreign State's norms for court action may be used if such an approach is provided for in an international agreement between Kazakhstan and that foreign State.

3. In fulfilling applications, the national language of Kazakhstan or the Russian language shall be used.

4. A representative of the competent institution of the other State may attend when the application is being fulfilled in cases where an international agreement provides for that possibility and the official referred to in article 523, paragraph 1, so permits.

5. If the application cannot be fulfilled, the documents received shall be returned via the Public Prosecutor's office or the Ministry of Justice to the foreign institution which made the application, with an indication of the reasons preventing fulfilment of the application.

Applications shall be rejected routinely if fulfilling them could harm the sovereignty or security of Kazakhstan, or if they are contrary to its legislation.

Article 526. Attendance and questioning of witnesses, victims, plaintiffs and defendants in civil suits, their representatives and experts

1. Witnesses, victims, civil plaintiffs, civil defendants and their representatives and experts who are nationals of a foreign State may, with their consent, be called by the authorized official with responsibility for a criminal case to appear in investigations or judicial proceedings in the territory of Kazakhstan.

2. Attendance notices shall be dispatched in accordance with the procedure laid down in article 523, paragraph 2, of this Code.

3. Investigations and judicial proceedings attended by witnesses, victims and other participants in the proceedings listed in paragraph 1 of this article shall be conducted in accordance with the rules contained in this Code, with the following exceptions: they may not be compelled to appear before an investigator or a court, or subjected to financial penalties or criminal prosecution for refusing to testify or avoiding testifying or for giving testimony or drawing conclusions that they know to be false. They may not be held criminally or administratively liable, remanded in custody or punished in Kazakhstan for acts committed before crossing the State frontier. Nor may such persons be held liable, remanded in custody or punished for testimony given as a witness or conclusions given as an expert in a criminal case that is the subject of proceedings.

4. If the individual referred to in paragraph 1 of this article and called to appear is held criminally liable or convicted of another crime in the territory of the State receiving the application, he may be handed over temporarily, irrespective of nationality.

5. The individuals referred to in paragraph 1 of this article shall lose the guarantees referred to in paragraph 4 of this article if they fail to leave the territory of Kazakhstan, despite having the opportunity to do so, within 15 days of being informed by the body directing criminal proceedings that their presence is no longer necessary. Calculation of that 15-day period shall not include periods for which the individuals were unable to leave the territory of Kazakhstan for reasons beyond their control.

Article 527. Supply of case documents to continue criminal investigations

If a foreign national commits a crime in the territory of Kazakhstan but has since left that territory, the body directing criminal proceedings shall submit a reasoned order for the trial to be halted in accordance with the procedure laid down in articles 50, 265 and 304 of this Code, as well as an order for a transfer of jurisdiction or cognizance in criminal cases in accordance with the procedure laid down in articles 192 and 306 of this Code. Case documents shall be forwarded to the Public Prosecutor of Kazakhstan or to an authorized prosecutor, with a request for a

criminal investigation to establish whether or not the case should be transferred to another State under an international agreement.

Article 528. Fulfilling requests for continuation of criminal investigations or instituting criminal proceedings

Requests from the appropriate institutions of foreign States for the transfer for further investigation of criminal cases relating to a national of Kazakhstan who has committed a crime in the territory of that foreign State and since returned to Kazakhstan shall be examined by the Public Prosecutor of Kazakhstan or an authorized prosecutor. In such cases, the preliminary investigation and the trial shall be conducted in accordance with the procedure laid down in this Code.

During continuation of an investigation in Kazakhstan, evidence obtained during the investigation of the case in the territory of a foreign State by authorized bodies or officials acting in due form and within their competence shall have legal force on a par with other evidence gathered in that case.

3. If a national of Kazakhstan commits a crime in the territory of a foreign State but returns to Kazakhstan before he is the subject of a criminal investigation, the bodies responsible for preliminary investigations in Kazakhstan may launch a criminal case and investigate it on the basis of evidence regarding that crime which has been supplied to the Public Prosecutor of Kazakhstan by an institution of the foreign State.

4. The body directing criminal proceedings must inform the Public Prosecutor of Kazakhstan or the authorized prosecutor of the final findings in the case and supply a copy of those findings.

Article 529. Demands for extradition to stand trial or to serve a sentence

1. In the cases and under the conditions prescribed in the legislation of Kazakhstan and in international agreements, the Public Prosecutor of Kazakhstan or an authorized prosecutor may request the competent institution of a foreign State to extradite a national of Kazakhstan who has been found guilty of a crime or who is the subject of a summons to appear as a defendant.

2. In the cases and under the conditions prescribed in international agreements and in the legislation of Kazakhstan, the body directing criminal proceedings shall apply to the Public Prosecutor of Kazakhstan or an authorized prosecutor for the extradition of an individual who has committed a crime in the territory of Kazakhstan but has since left that territory, attaching to the application all the necessary documents.

3. The demand for extradition must contain:

(1) The name of the body under whose jurisdiction the case falls;

(2) The full name of the convicted person or defendant, year of birth, nationality, physical description and photographs;

(3) Details of the factual circumstances of the crime, the text of the law providing for liability for that crime and the penalties attached to that crime;

(4) Details of the date and place of the sentence in force, or summons to appear as a defendant, with certified true copies of the relevant documents.

4. The request for extradition must be accompanied by: a copy of the order for announcement of charges, a copy of the custody order, documents confirming the nationality of the individual to be extradited and the ruling of the authorized prosecutor on the legality and foundation of the extradition request.

Article 530. Limits of the criminal liability of the extradited individual

1. Individuals extradited by a foreign State cannot be held criminally liable, punished or handed over to a third State for any crime other than that for which they were extradited without the consent of the State from which extradition took place.

2. The rule laid down in paragraph 1 of this article shall not apply to crimes committed after extradition.

Article 531. Fulfilling demands for the extradition of foreign nationals

1. A demand for the extradition of a foreign national accused or convicted of a crime in the territory of a foreign State shall be examined by the Public Prosecutor of Kazakhstan or an authorized prosecutor, whose findings shall form the basis for carrying out the extradition. If several States demand the extradition of an individual, the Public Prosecutor of Kazakhstan shall decide to which of those States the individual is to be extradited.

2. The conditions and procedure for extradition shall be laid down by this Code and an international agreement between Kazakhstan and a foreign State.

3. If a foreign national who is the subject of an extradition request is serving a sentence for another crime in the territory of Kazakhstan, extradition may be postponed until that sentence has been served or until legal release from that sentence. If the foreign national has been brought to criminal trial, extradition may be postponed until a verdict has been handed down, until a sentence has been served or until acquittal of criminal liability or punishment for whatever reason. If postponement of the extradition would lead to expiry of the statute of limitation on criminal investigations or imperil investigation of the crime, the individual who is the subject of the extradition demand may be handed over for a period established by agreement between the parties.

4. Individuals handed over temporarily must be returned on completion of the criminal proceedings for which they were handed over and in any event no later than three months after the handover took place. That period may be extended by mutual agreement, but for no longer than the length of the sentence for the crime committed in the territory of Kazakhstan or the length of the sentence permitted under the law of Kazakhstan.

5. Having received an order for extradition from the Public Prosecutor of Kazakhstan or from an authorized prosecutor, the administration of the detention centre shall have 30 days in which to complete the transportation and handover of the individual concerned to the appropriate body in the foreign State requesting the extradition, and to inform the Public Prosecutor of Kazakhstan or the authorized prosecutor that that obligation has been fulfilled.

Article 532. Refusal to extradite

1. Extradition shall not be permitted if:

(1) The person has been granted political asylum by Kazakhstan;

(2) The act that is the basis for the extradition request is not considered an offence in Kazakhstan;

(3) The person has already been convicted of the same offence and the sentence is legally in force, or proceedings in the case have been halted;

(4) Under Kazakh law, criminal proceedings may not be brought or a sentence may not be carried out because of a statute of limitation or for any other lawful reason.

2. Extradition may also be refused if the offence for which extradition is being requested was committed in Kazakh territory or outside it but was directed against the interests of Kazakhstan.

Article 533. Continuation of prosecution of stateless persons and nationals of third countries and extradition thereof

The procedure for sending materials for continuing the prosecution of or for executing requests to continue the prosecution of or to institute criminal proceedings against stateless persons and nationals of third countries is determined by the rules contained in articles 527 and 528 of this Code.

The procedure for extraditing stateless persons and nationals of third countries is determined by the rules contained in articles 529, 530, 531 and 532 of this Code.

Article 534. Detention for extradition purposes (Arrest and placing in custody pending extradition)

1. On receipt of an appropriately formulated request from a competent institution of a foreign State and if there are lawful grounds for a person's extradition, he may be arrested and subjected to preventive measures, in the form of detention for extradition purposes.

On application by the requesting State, a person may also be detained prior to receipt of the extradition request. The application must contain a reference to a decision to place the person in custody or to a sentence that is legally in force and an indication that the extradition request will be submitted subsequently.

The application for detention prior to receipt of the extradition request may be transmitted by post, telegraph, telex or fax. After consideration of the materials submitted, if there are sufficient grounds to believe that the detainee is the person sought and in the absence of grounds set forth in article 532 of this Code, the prosecutor shall take a decision concerning detention for extradition purposes, which decision shall be communicated to the arrested person in writing.

The prosecutor shall immediately inform the Public Prosecutor of Kazakhstan or an authorized prosecutor that he has ordered the arrested person's detention for extradition purposes, indicating the State of which he is a citizen and the name of the organ seeking him.

2. A person may also be detained for up to three days without the application stipulated in paragraph 1 of this article, if there are grounds specified by law to suspect that he has committed in the territory of the other State an offence entailing extradition.

3. The institution of the foreign State that has sent or may send the extradition request or application for detention shall be informed immediately that the person has been placed in custody, and a time and place for the extradition shall be proposed.

4. If the extradition does not take place within 30 days, the person being held in custody may be released at the decision of the prosecutor. A person detained under paragraph 2 of this article must be released if no request for his extradition is received within the period specified by Kazakh legislation for detention in police custody. A person may be placed in custody a second time only after consideration of a new extradition request in conformity with paragraph 1 of this article.

5. A prosecutor may detain a person for extradition purposes under article 531 of this Code for up to one month.

6. If no extradition request is received within this time from the competent institution of the State seeking the person but there is an application for detention and a guarantee that the extradition request will be sent subsequently, the regional prosecutor or a prosecutor of equal rank may, on application by the prosecutor who ordered the detention, extend the period of detention for extradition purposes to two months; the Public Prosecutor of Kazakhstan or an authorized prosecutor shall be informed thereof.

7. In exceptional cases, under the conditions indicated in paragraph 2 of this article, the Public Prosecutor of Kazakhstan or an authorized prosecutor may, on application by the regional prosecutor or a prosecutor of equal rank, extend the period of detention for extradition purposes to three months.

8. The administration of the detention centre is required, not later than seven days prior to the expiration of the period for which the detainee may be held in custody, to so inform the prosecutor who ordered the detention for extradition purposes.

9. The person detained for extradition purposes shall be released on the decision of the prosecutor who ordered the detention, including, on the expiration of the periods indicated in this article if the extradition has not taken place within that time; the Public Prosecutor of Kazakhstan or an authorized prosecutor shall be informed immediately thereof.

Article 535. Transit

1. An application from an institution of a foreign State for the transit across the territory of Kazakhstan of a person extradited to that institution by a third State shall be considered under the same procedure as an extradition request.

2. The means of transit shall be determined by the Public Prosecutor of Kazakhstan in agreement with the relevant departments.

Article 536. Handover of items

1. On the extradition of a person to an institution of a foreign State, items that are instruments of an offence, constitute evidence of an offence or were obtained by criminal means shall be handed over. These items shall be handed over also in cases where the extradition of the person cannot take place, either because of his death or for other reasons.

2. The items indicated in paragraph 1 of this article may be held temporarily if they are needed for proceedings in another criminal case.

3. In order to safeguard the lawful rights of third parties, the items indicated in paragraph 1 of this article shall be handed over only if the institution of the foreign State guarantees that they will be returned on the completion of proceedings in the case.

Legal relations with foreign States in criminal matters are based on chapter 55 of the Code of Criminal Procedure, entitled "Basic provisions regarding the procedure for cooperation in criminal matters between organs conducting proceedings and competent institutions and officials of foreign States" (excerpts attached), and on international treaties concluded by Kazakhstan with respect to legal assistance in criminal matters.

To date, such international treaties have been concluded with eight States, namely, Kyrgyzstan, Uzbekistan, Lithuania, China, the Democratic People's Republic of Korea, Mongolia, Pakistan and Turkey. In addition, cooperation takes place under the aforementioned Minsk Convention.

Article 526.[2] *Attendance and questioning of witnesses, victims, plaintiffs and defendants in civil suits, their representatives and experts*

3. Investigations and judicial proceedings attended by witnesses, victims and other participants in the proceedings listed in paragraph 1 of this article shall be conducted in accordance with the rules contained in this Code, with the following exceptions: they may not be compelled to appear before an investigator or a court, or subjected to financial penalties or criminal prosecution for refusing to testify or avoiding testifying or for giving testimony or drawing conclusions that they know to be false. They may not be held criminally or administratively liable, remanded in custody or punished in Kazakhstan for acts committed before crossing the State frontier. Nor may such persons be held liable, remanded in custody or punished for testimony given as a witness or conclusions given as an expert in a criminal case that is the subject of proceedings.

1.14 Please provide a progress report on the ratification by the Government of Kazakhstan of those of the 12 international instruments relating to terrorism that have not yet been ratified. Please outline the provisions that give effect to those instruments in domestic legislation.

Pursuant to article 10 of the Decree of the President of the Republic of Kazakhstan of 12 December 1995 on the procedure for the conclusion, implementation and denunciation of international treaties of the Republic of Kazakhstan, which has the force of law, international treaties are ratified by the Parliament of Kazakhstan by means of the adoption of a law. In accordance with article 26 of the Act of the Republic of Kazakhstan of 24 March 1998 on laws and regulations, the procedure for the entry into force of laws is defined in the laws themselves or in separate laws.

In conformity with article 4 of the Constitution of the Republic of Kazakhstan, international treaties ratified by Kazakhstan take precedence over its laws and are

[2] *Translator's note*: This excerpt from article 526 already appears earlier in this report and seems to be out of place here.

applicable with immediate effect, except where it follows from an international treaty that its application requires the promulgation of a law.

2. Assistance and guidance

2.4 At this stage the Counter-Terrorism Committee will be focusing on requests for assistance that relate to "Stage A" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the resolution is a matter for agreement between them. The Counter-Terrorism Committee would be grateful to be kept informed of any such arrangements and of their outcome.

Kazakhstan is actively engaged in developing a system for countering terrorism at the regional and international levels. Kazakhstan is constantly providing assistance to partner States in the anti-terrorist coalition. Information and experience are being exchanged between the competent organs of Kazakhstan and foreign countries.

The Agreement on Cooperation among States Members of the Commonwealth of Independent States (CIS) in Combating Terrorism, which is based on a clear definition of the concept of "terrorism" in all its manifestations, was concluded on 4 June 1999.

Cooperation under this Agreement takes place on the basis of requests for assistance from the party concerned or on the initiative of the parties.

The Agreement on Cooperation among CIS Ministries of Internal Affairs [in Combating Terrorism] was signed on 8 September 2000 to further these relations.

Cooperation is continuing in the conduct of coordinated day-to-day preventive and special operations to prevent, detect and suppress offences, including those of a terrorist or extremist orientation, hostage-taking and illegal migration channels, exchange information on members of and persons involved in terrorist, extremist or separatist organizations, locate and detain them, and cut off their routes of movement in CIS territory.

Pursuant to the Shanghai Convention on Combating Terrorism, Separatism and Extremism, signed in June 2001 within the framework of the Shanghai Cooperation Organization, the parties are to take all necessary measures to outlaw and punish, according to the degree of seriousness, the justification of terrorism, separatism and extremism on political, philosophical, ideological, racial, ethnic, religious or other grounds within the bounds permitted by international law and the norms of the domestic legislation of the countries party to the Convention.

Kazakhstan is also conducting courses, training and exercises for representatives of the special services involved in counter-terrorism.

In addition, in the context of the anti-terrorist operation in Afghanistan "Operation Enduring Freedom", in 2002 Kazakhstan allowed the Government of the United States of America to use the Almaty international airport for emergency landings by aircraft of the United States Air Force. In 2003 the Danish and Norwegian air forces were allowed to use the Shymkent airport, also for emergency landings.

Kazakhstan has concluded bilateral agreements on cooperation in countering terrorism and international organized crime with Germany, Hungary, Pakistan,

China, Uzbekistan, the Russian Federation, Kyrgyzstan, Georgia, the Republic of Moldova, Ukraine, Lithuania, Turkey, India and Poland.

On 12 February 2002 in New Delhi, Kazakhstan and India signed a joint declaration, in which they confirmed their commitments under Security Council resolution 1373 (2001) and declared their intention to establish a bilateral mechanism on issues relating to cooperation in counter-terrorism.

On 24 May 2002, the Government adopted a decision on the conclusion of an agreement between the Government of Kazakhstan and the Government of Poland on cooperation in combating organized crime and other forms of crime, which is also aimed at preventing the crimes of terrorism and hostage-taking.

The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases was signed on 7 October 2002 in Kishinev, Republic of Moldova, within the framework of CIS. The internal State procedures necessary for its entry into force are currently being completed.

The competent organs of Kazakhstan, in conformity with national legislation and international treaties, have developed a mechanism for exchanging operational information on combating terrorism and extremism with the special services of foreign States. Cooperation is also taking place in this area with the National Central Office of the International Criminal Police Organization.

Kazakhstan notes that the scope of the 12 international conventions and protocols relating to counter-terrorism is limited either to the areas in which they apply (air or maritime transport) or to the targets at which terrorist acts are directed (diplomatic agents or hostages).

In this connection, Kazakhstan believes that a well-founded need has emerged for the development of new universal agreements in this area.

Kazakhstan is prepared, on the basis of reciprocity and within the framework of existing international treaties, to continue to assist the competent organs of foreign States in implementing counter-terrorism measures.